

## REMARKS

The Office Communication of April 27, 2005 has been received and reviewed. Claims 18, 21-25, 32, 33, 38, 50 and 53-55 are currently pending in the application and subject to a Species Election. Applicant hereby provisionally elects, with traverse, to prosecute species (a), including SEQ ID NO: 9 (CPS2).

### Species Election

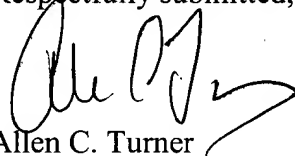
The Office Communication of April 27, 2005 requires applicant to select one of four species indicated, *i.e.* SEQ ID NOS: 9, 29, 37 and 43 (CPS2, CPS1, CPS9 and CPS7, respectively). (*See*, Office Communication, at page 2). Applicant provisionally elects to prosecute SEQ ID NO: 9. This election is made with traverse for the reasons set forth hereinafter.

This election is made with traverse because the Office Communication cites no statutory or regulatory authority for the basis of the species election requirement. The M.P.E.P. § 803.04 states, in part, with respect to nucleotide sequences, that “the Commissioner has decided *sua sponte* to partially waive the requirements of 37 C.F.R. 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application.” (*See also*, M.P.E.P. § 2434, allowing, “in most cases, up to 10 independent and distinct nucleotide sequences” to be examined in a single application, and further at § 803.04, stating “[i]t has been determined that normally ten sequences constitute a reasonable number [of sequences] for examination purposes.”). As such, applicant respectfully submits that requiring a selection of only one sequence for examination cuts directly against the Office’s own policy. Consequently, applicant requests examination of four sequences, SEQ ID NOS: 9, 29, 37 and 43; all sequences being capsular gene clusters of *S. suis*. Thus, applicants request reconsideration and withdrawal of the species election and examination of all four selected sequences (SEQ ID NOS: 9, 29, 37 and 43).

## CONCLUSION

In view of the foregoing provisional election and remarks, applicant respectfully requests a prompt action on the merits of claims 18, 21-25, 32, 33, 38, 50 and 53-55. If any questions remain after consideration of the foregoing, the Office is invited to contact the applicant's attorney at the address or telephone number given herein.

Respectfully submitted,



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